



June 21, 2001

Mr. John Hoffman
Vice-Chair, State Policy Committee
of the State Employee Charitable Campaign
823 Congress Avenue, Suite 1103
Austin, Texas 78701

OR2001-2636

Dear Mr. Hoffman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148641.

The State Policy Committee (the "committee") of the State Employee Charitable Campaign (the "SECC") received a request for information related to the committee and its determination of eligibility of organizations to participate in the SECC. This request was clarified and narrowed to request only information related to the statewide campaign of the SECC and the committee, and not to include information related to local SECC campaigns.¹ You state that you will release some of the requested information to the requestor. You claim, however, that some of the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also considered the comments submitted to this office by the requestor and by counsel for the committee. See Gov't Code § 552.304.

Section 552.101 of the Government Code excepts from disclosure information deemed confidential by law. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying

¹We note that this request was also narrowed to exclude the IRS Form 990's, which were initially submitted to this office for review.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

only under a court order issued under Subsection (b)(3)." (Emphasis added.) Thus, such information cannot be released to a member of the public in response to an open records request. See Open Records Decision No. 495 (1988). You state that you are withholding "any tapes of closed session" meetings that are responsive to the present request. We agree that the committee must withhold such audio tapes from public disclosure under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

Section 552.107(1) of the Government Code excepts information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]" While section 552.107(1) appears to apply to information within rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, this office determined that section 552.107 cannot be applied as broadly as written to information in the possession of an attorney for a governmental body. Open Records Decision No. 574 (1990). Section 552.107(1) was found to protect only the attorney's communication of legal advice or opinion to the client and communications from a client to an attorney where those communications are made in confidence and in furtherance of the attorney rendering professional legal service to the governmental body. *Id.* at 5. Moreover, section 552.107(1) does not except purely factual information from disclosure. *Id.* We determine the applicability of section 552.107(1) on a case-by-case basis. We agree that the information in Exhibits D, F, N-2, and O-2 reflect client confidences that the committee may withhold under section 552.107. We also agree that the information in Exhibit E reflects an attorney's legal advice or opinions that the committee may withhold under section 552.107.

Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. Yet, where a document is a genuine preliminary draft that has been released or is intended for release in final form, factual information in that draft which also appears in a released or releasable final version is excepted from disclosure by section 552.111. Open Records Decision No. 559 (1990). However, severable factual information appearing in the draft but not in the final version is not excepted by section 552.111. *Id.*

You state that the information in Exhibit G consists of draft minutes of committee meetings. You further state that audio recordings and/or official minutes of the meetings about which the requestor inquires have been or will be provided to the requestor. Based on your representations and our review of the submitted information, we agree that the draft minutes of committee meetings may be withheld in their entirety under section 552.111 of the Government Code. We also agree that the information in Exhibits H and O-1, as well as much of the information in Exhibits I-1, I-2, I-3, J-1, J-2, J-3, and N-1, consists of advice, opinions, and recommendations and may be withheld under section 552.111 of the Government Code. We have marked the information in Exhibits I-1, I-2, I-3, J-1, J-2, J-3, and N-1 that the committee may withhold from the requestor.

Section 552.101 encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. We agree that the committee may withhold the information you have marked in Exhibit P based on section 552.101 and common law privacy.

To summarize, we conclude that: (1) the committee must withhold the audio tapes of the closed session meetings that are responsive to the present request under section 552.101 of the Government Code; (2) the committee may withhold Exhibits D, E, F, N-2, and O-2 from disclosure under section 552.107(1); (3) the draft minutes of committee meetings may be withheld in their entirety under section 552.111 of the Government Code; (4) the committee may withhold Exhibits H and O-1, as well as the information we have marked in Exhibits I-1, I-2, I-3, J-1, J-2, J-3, and N-1, under section 552.111; and (5) the committee may withhold the information it has marked in Exhibit P based on section 552.101 and common law privacy. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 148641

Enc: Submitted documents

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